

NIH POLICY MANUAL

26101-18-1P - ACQUISITION OF REAL PROPERTY BY PURCHASE

Issuing Office: ORS/DSFM 496-3172

Release Date: 09/20/95

A. Purpose and Scope:

These procedures describe the actions that must be undertaken by the NIH and those Institutes, Centers, and Divisions (ICD) with the authority to acquire real property in order to purchase a fee simple interest in real property in the name of the United States of America. These procedures do not address the source of funding or authority to purchase real property nor do these procedures include the acquisition of real property by any method other than purchase.

B. References:

1. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601 et seq.) and implementing regulations at 49 CFR Part 24. These authorities set forth the policy for acquisition of property by Federal agencies and fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs.
2. Public Health Service Facilities Manual, Vol. I, Chap. 3-4. This sets forth the PHS policy and general guidelines on evaluating and selecting sites for planned new facilities which will not be part of an existing facility.
3. Public Health Service Act, as amended, authority of the National Institutes of Health (NIH) and its ICDs to acquire real property (42 U.S.C. 282(b)(4)(A), 285a-2(b)(6)(A), 285b-3(b)(2)(A), 285a-4(b)(3), and 286a-1).
4. Public Health Service Facilities Manual, Vol. II, Chap.

2-1-40. This sets forth the PHS policy and general guidelines for the acquisition of real property by purchase.

5. Department of Health and Human Services General Administration Manual, Chap. 24-04-00.
6. National Environmental Policy Act (NEPA) of 1969, as amended, Pub. L. 91-190 (42 U.S.C. 4321). This law prescribes the consideration that must be given to the impact on the human environment.
7. National Historic Preservation Act of 1966, as amended, Pub. L. 89-665 (16 U.S.C. 470 et seq.). This law requires an evaluation of the action to determine what impact the action will have on historic properties listed or if a property may be eligible for listing in the National Register of Historic Places. This act also directs Federal agencies to preserve cultural heritage.
8. The Architectural and Historic Preservation Act (16 U.S.C. 469 a-1 et seq.). This law directs Federal agencies to preserve significant scientific, prehistoric, historical and archeological data.
9. "A Procedural Guide for the Acquisition of Real Property by Governmental Agencies," Department of Justice (DOJ), 1972.
10. "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States," DOJ, 1970.
11. Publications of the National Capital Planning Commission (NCPC):
 - a. "Procedures for Intergovernmental Cooperation in Federal Planning in the National Capital Region;"
 - b. "Project Plans Submission Requirements;" and
 - c. "Environmental Policies and Procedures."

Policy:

In order for the NIH to acquire real property by purchase, all of the following conditions must be met:

1. the acquisition is authorized by statute and the signing official for the NIH/ICD has been delegated authority

under the statute;

2. a Program Description and Justification Document (PJD) must be approved which shows that the demonstrated need cannot be satisfied in facilities currently available;
3. a Program of Requirements (POR) has been approved;
4. funds have been appropriated;
5. an acquisition schedule must be approved by the Director, DSFM;
6. a Site Evaluation Checklist must be completed and show that property being considered for acquisition has the potential to meet the needs described in the approved POR;
7. a toxic/hazardous waste investigation report must be completed;
8. an Environmental Assessment (EA) must be completed as well as an Environmental Impact Statement (EIS), if necessary;
9. a title insurance binder has been issued by a company approved by DOJ, and an abstract and title opinion have been obtained;
10. the Attorney General has rendered a favorable preliminary title opinion to the property (40 U.S.C. 255);
11. before the start of purchase negotiations, at least two formal appraisal reports of the estimated fair market value (FMV) of the property must be issued to the NIH; and the seller or seller's designated representative shall have been given an opportunity to accompany the NIH's appraiser during the inspection of the property;
12. before the start of purchase negotiations, the NIH shall establish an amount of just compensation through formal appraisal; and
13. the DOJ has issued a favorable final title opinion.

D. Definitions:

1. Appraisal - a supported estimate or opinion, as of a

certain date, of a defined value made by a person knowledgeable about the type of property being appraised and professionally qualified to prepare a complete, accurate appraisal report.

2. Environmental Assessment (EA) - the evaluation of the potential environmental impacts of a project or activity. An assessment covers the same topical areas as an Environmental Impact Statement, but with less detail.
3. Environmental Impact Statement (EIS) - a full disclosure, detailed report which, pursuant to Section 102(2)(C) of NEPA, identifies and analyzes the anticipated environmental impacts of a proposed action and discusses how the adverse effects will be mitigated.
4. Fair Market Value (FMV) - the most probable price in terms of money that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably, in their own best interest, and assuming the price is not affected by undue stimulus.
5. Fee Simple Interest - ownership in real property by which the owner has title limited only by the four government powers:
 - a. Escheat - the right of the state to take back title to property if the owner dies or disappears and leaves no relatives or heirs.
 - b. Taxation - a levy under legal auspices for governmental purposes.
 - c. Police power - power of a government body to regulate property for the health, safety, morals, and general welfare of the public.
 - d. Eminent domain - power of a government to acquire property for a public purpose by paying just or reasonable compensation.
6. Program Description and Justification Document (PJD) - the formal documentation that describes a specific project and its programmatic justification.
7. Program of Requirements (POR) - the formal documentation that contains programmatic information,

plus detailed information on the technical and functional requirements of a specific project.

8. Seller - one who has the right of ownership, or a person who has legal authority (an Agent) to represent the person having the right of ownership, in the sale of property.
9. Site Evaluation Checklist - the formal documentation, prepared by the Site Evaluation Team, of the key features of a site and the identification of possible physical problems.
10. Site Evaluation Team - the focal point in the site inspection/investigation effort. This team will consist of employee or contractor representatives from within the ORS: the Division of Space and Facility Management, the Division of Safety; and the Division of Engineering Services. This team will also include representatives from the purchasing ICD(s) and affected ICD(s.)
11. Solicitation For Offers (SFO) - the formal documentation to invite offers. This document incorporates the POR and contains other specifications and information necessary to enable a prospective offeror to prepare a proposal.

E. Responsibilities:

1. Office of the General Counsel (OGC):
 - a. will provide all legal guidance and advice required by other divisions during the site evaluation and selection, pre-settlement, closing stages, and necessary follow-up;
 - b. will prepare and assemble or review all sales contract documents and requests to the DOJ for preliminary and final title opinions; and
 - c. will assist the DOJ in acting as NIH's representative and agent in settlement action.
2. Division of Space and Facility Management (DSFM)/ORS:
 - a. will designate a representative who will act as the project coordinator and lead the site acquisition process for a specific real property

asset to fulfill a documented need;

- b. will ensure proper and timely completion of all aspects of a purchase and will obtain all purchase approvals;
- c. will have responsibility for policies related to the purchase process and will provide such guidance to other ORS divisions and the ICDs;
- d. will review and comment on a POR;
- e. will head the Site Evaluation Team;
- f. will acquire information from appropriate local or state authorities on approved usage zoning in the area under consideration before the site selection process begins;
- g. will obtain documentation concerning the property as requested by OGC; and
- h. dependent upon jurisdiction, will coordinate with the NCPC or their counterpart organization.

3. Office of Financial Management (OFM)/OD:

- a. In conjunction with the purchasing ICD's Budget Office, will ensure that funds for the purchase of real property and its related administrative and legal costs are authorized and appropriated, which shall include, but may not be limited to, appraisal and outside legal fees, the real property purchase price, and advertising fees.

4. Division of Safety (DS)/ORS:

- a. will coordinate preparation of the EA, the EIS, or other environmental and safety related documentation, when necessary;
- b. will ensure compliance with the National Environmental Policy Act of 1969 (NEPA), as amended; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 et seq); and other applicable federal, state, and local laws and regulations;
- c. will be represented on and will provide guidance

to the Site Evaluation Team related to consideration of environmental factors in the site selection process;

- d. will ensure that the impacts of any property contamination and/or remediation are fully considered and incorporated into the NEPA-related environmental analysis and other environmental compliance mandates;
 - e. will provide technical consultation regarding the detection, assessment of risk, and mitigation of hazardous materials and/or wastes;
 - f. will acquire from appropriate local or state authorities, when possible, information on the environmental and safety conditions of the area under consideration before the site selection process begins; and
 - g. will identify, to the extent possible, existing, potential, or suspected environmental and safety conditions from either past activities on a site or on neighboring sites that may devalue the property, restrict its use, or create a liability for the NIH.
5. Division of Engineering Services (DES)/ORS:
- a. will assist the DSFM in pre- and post-acquisition activities, including market survey and technical proposal evaluation;
 - b. will prepare a PJD and POR;
 - c. will be represented on the Site Evaluation Team;
 - d. will acquire from appropriate local or state authorities, when possible, information on the geological and engineering conditions, including utilities, water/sewer, etc., in the area under consideration before the site selection process begins; and
 - e. will identify, to the extent possible, suspected geological, engineering, or historic conditions on the site or on neighboring sites that may devalue the property, or restrict its use.

6. Office of Community Liaison (OCL), OD

- a. will represent the NIH to promote and maintain effective communication between NIH and the affected community(ies); and
- b. will be the point of contact for interaction with National Capital Planning Commission (NCPC).

Procedures:

Following a decision to negotiate for the purchase of real property and the completions of items 1 through 5 of Part C, the procedures described below will be undertaken. The average time for the acquisition process, beginning with the completion of items 1 through 5 of Part C, is 18 to 40 months.

1. The DSFM completes the below listed items. All of the items should normally be completed within 60 working days.
 - a. publishes the intent to purchase real property in the Commerce Business Daily (CBD);
 - b. publishes the intent to purchase real property in all major regional newspapers;
 - c. develops an SFO; and
 - d. notifies the OCL who will notify representatives of the affected community(ies) and either the NCPC or its counterpart organization.

The CBD and newspaper notices will include the requirement that interested parties having property to offer must respond within 14 working days of publication.

The SFO must have the concurrence of the Directors of the DSFM, the DES, and the DS, and the approval of the Associate Director for Research Services (ADRS).

The NCPC, or its counterpart organization, will review the proposed action and will make recommendations to ensure consistency with official local, state and regional plans. This step should normally be completed within 30 to 60 working days from receipt of DSFM's

notification.

2. The Site Evaluation Team will conduct a site evaluation of all offered properties. The DSFM will obtain a signed Seller's Right of Entry Statement (Appendix 1) from the Seller and the Site Evaluation Team will complete a Site Evaluation Checklist (Appendix 2) on each property surveyed. This checklist will be used to assist in identifying locations having the potential to meet the NIH's requirements as described in the SFO. Some sites can be eliminated immediately and will not require completion of a checklist. This step should normally be completed within 21 to 60 working days.
3. Each Seller of a property must submit to the DSFM a Seller's Checklist (Appendix 3) within 10 days of a site evaluation survey.
4. The DSFM will issue the SFO to all interested Sellers whose property has the potential to meet the needs of the NIH, as determined by the Site Evaluation Team. This step should normally be completed within 5 working days after completion of the site evaluation phase and receipt of the Sellers' Checklists.
5. The Site Evaluation Team will rank the offered properties from the most to the least advantageous to the NIH. This step should normally be completed within 60 working days after completion of the site evaluation.
6. The DSFM will order an appraisal of the FMV of the most and second most advantageous properties. The appraisal process should normally be completed within 120 working days from the Site Evaluation Team's ranking of the offered properties.
7. The DSFM will notify the purchasing ICD's Budget Office and OFM of the FMV of the property selected to be purchased, i.e, the most advantageous. This step should normally be completed within 10 days following receipt of the appraisal reports of the FMV.
8. The purchasing ICD and OFM will confirm that funding in the amount of the FMV has been committed. This step should normally be completed within 5 working days of being notified of the FMV of the property to be purchased.
9. The DS will arrange for all necessary environmental and

safety reports on the two properties. The first phase in this step is the EA that should normally be completed within 60 working days of being notified of the FMV of the property to be purchased. If necessary, an EIS may also be required. The second phase in this step should normally be completed within 24 months of completion of the EA.

10. The DES will arrange for all necessary geological and other engineering reports. This step should normally be completed within 12 months of DSFM being notified of the FMV of the property to be purchased.
11. The Seller of the most and second most advantageous properties will be asked to submit its price for the sale. This step should normally be completed within 10 working days from receipt of all environmental, safety, geological, and engineering reports.
12. The DSFM will order an update of the original appraisal of the FMV of the most and second most advantageous properties. The appraisal update process should normally be completed within 90 working days from receipt of all environmental, safety, geological, and engineering reports.
13. The DSFM will notify the purchasing ICD's Budget Office and OFM of the updated FMV of the property selected to be purchased. This step should normally be completed within 10 days following receipt of the updated appraisal reports of the FMV.
14. The purchasing ICD and OFM will confirm that funding in the amount of the updated FMV has been obligated. This step should normally be completed within 5 working days of being notified of the FMV of the property to be purchased.
15. The Site Evaluation Team will make a recommendation to the ADRS on whether to proceed with negotiations or not. The Site Evaluation Team will confirm the site to be purchased.
16. The ADRS will evaluate and respond to the Site Evaluation Team's recommendation to proceed with negotiations or not. This step should normally be completed within 10 working days from receipt of the recommendation.

17. The DSFM should lead the negotiations. The Site Evaluation Team, along with a representative from the OGC, will participate in the negotiations. The final price and terms and conditions of the purchase will be determined through the negotiation process and will be based upon the updated FMV as established by an independent fee appraisal; environmental, safety, geological and engineering reports; and other studies and reports.

The NIH may accept a voluntary offer to sell made by a seller at an offered price which is less than the updated FMV. This acceptance of a voluntary offer may be made only when all of the following conditions are met, as contained in 49 CFR Part 24.101, which implements the requirements in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended:

- a. the NIH has not made a determination that a specific site and no others will satisfy the requirements of the acquisition project and only that site will be acquired;
 - b. the property to be acquired is not part of a project where all or substantially all of the property within the area is to be acquired within specific time limits;
 - c. the NIH will not acquire the property in the event negotiations fail to result in an amicable agreement, and the Seller is so informed in writing; and
 - d. the NIH informs the Seller of the price range it believes to be representative of the FMV of the property.
18. If the property is not purchased under the voluntary procedures, the NIH will tender to the Seller of the property an offer to purchase that is most advantageous to NIH. The offer to purchase the property shall be made in writing and should be at an amount not less than an amount consistent with Federal regulations or laws. Concurrently, the NIH will give the Seller a reasonable opportunity to evaluate the offer and to present material which the seller believes is relevant to

determining the FMV of the property and to suggest modification in the proposed terms and conditions of the purchase.

19. If the information presented by the Seller, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal, the NIH will have the appraisal updated or obtain a new appraisal.
20. The DSFM will obtain and transmit to OGC a title insurance binder from an DOJ approved title company. This step should normally be completed within 45 working days following the conclusion of negotiations and mutual agreement by the parties of the terms and conditions of the purchase.
21. The OGC will submit a request to the DOJ for a preliminary title opinion. This step should normally be completed within 15 working days following receipt of the title insurance binder.
22. The DSFM will arrange for completion of the Site Purchase Recommendation Report (Appendix 4). This step should normally be completed within 10 working days following receipt of a favorable preliminary title opinion from the DOJ.
23. The Site Purchase Recommendation Report will be submitted to the ADRS for site selection and purchase approval within 5 working days of completion.
24. The ADRS will approve or disapprove the site selection and purchase. If disapproved, no further action will be taken until such time as the ADRS decides to proceed. This step should normally be completed within 30 working days of receipt of the Site Purchase Recommendation Report.
25. The DSFM will provide necessary documentation to the OCL in order for them to keep the affected community(ies) informed and to submit the proposed purchase of property within the National Capital Region (NCR) to the NCPC for final review. The NCR includes Montgomery and Prince George's Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties, and the independent cities within the

outer boundaries thereof in Virginia or Maryland; and the District of Columbia. A purchase outside of the NCR will submitted to the NCPC's counterpart organization. This step should normally be completed within 15 working days following receipt of the ADRS' approval to purchase the recommended property. This step should normally be completed within 90 calendar days from receipt of DSFM's notification to purchase.

26. In consultation with DSFM, the OGC will schedule the time, date, and location for closing the sale. The DSFM will attend the closing and provide necessary assistance. This step should normally be completed within 10 working days following receipt, through the OCL, of the NCPC or its counterpart organization's final comments and recommendations on the purchase of the property.

The consummation of the purchase and sale of the property contemplated hereby should take place at a mutually agreed upon time on the latest of the following dates:

- a. the date sixty (60) days after expiration of the Study Period (i.e., a period of up to 270 days following the Effective Date of the Seller's agreement to sell and the Government's agreement to purchase);
 - b. the date sixty (60) days after expiration of the Title Review Period;
 - c. the date sixty (60) days after completion of any required Remediation Action, or, if applicable, the date sixty (60) days after the Government agrees in writing that no Remediation Action is necessary; or
 - d. the date sixty (60) days after completion of any casualty restoration provided, however, that the Government may elect a date earlier than the date determined above if the NIH first gives Seller at least thirty (30) days' notice, specifying the date.
27. The OGC will prepare the Real Estate Purchase Agreement (Appendix 5) and any other relevant documentation. This step should normally be completed within 5 working days following receipt of a favorable

preliminary title opinion from the DOJ.

28. The DOJ, OGC, and DSFM will close the sale on the date scheduled for such purpose.
29. The OGC will submit a request to the DOJ for a final title opinion. This step should normally be completed within 60 working days after closing.
30. Preferably on the day of closing, but no later than the following business day, the OGC and/or DSFM will record or arrange for recording the sale in the appropriate local recording office.
31. The OGC will provide to the DSFM all legal documentation and related materials. This step should normally be completed within 5 working days following the receipt of final opinion of title from DOJ stating that the title to the property belongs to the United States.
32. The DSFM will update all real property files and notify the Public Health Service. This step should normally be completed within 10 working days following the receipt of all legal documentation and related materials from the OGC.

Appendix 1. Seller's Right of Entry Statement:

Seller certifies that he/she hereby grants NIH, its employees, agents, contractors, consultants, and any other necessary technical support personnel, the right to enter upon the site during business hours, and at all other times upon reasonable notice to the Seller, and Seller grants NIH the right to, at the expense of NIH, make such audits, appraisals, inspections, tests (environmental and otherwise), and other investigations of the site, that NIH, at its sole reasonable discretion, deems necessary or desirable. In addition, NIH shall, to the extent possible, repair any damage to the site caused by any tests or other activities granted herein by the Seller.

Seller certifies that he/she understands that information provided by the audits, appraisals, inspections, tests (environmental and otherwise) and other investigations of the site may be released to the public.

Sellers Signature:_____

Date: _____

If Corporation/Partnership:

Title: _____

Appendix 2. Site Evaluation Checklist:

Instructions

The following questions regarding environmental, health and safety matters are to be completed by a Site Evaluation Team.

This checklist shall be completed during the initial site evaluation process prior to selecting up to two sites for purchase.

The answers to the questions are to be based upon conditions actually viewed during the course of a visit to the site. They are not to be based upon speculation of information provided by any third party. If the team lacks sufficient information to accurately answer a question, write "Unable to Determine."

If the answer to a question is "yes," describe, in as much detail as possible, the reason for the answer. Attach any additional sheets as needed.

All members of the Site Evaluation Team are required to sign this checklist.

PROJECT INFORMATION

1. Project Name:
2. Provide the names and titles of the persons completing this Checklist.
3. Provide the address of the site, including the county in which it is located.
4. If a building is to be constructed, what is its proposed

size?

5. What are the projected number of occupants?

GENERAL SITE INFORMATION

6. Provide the names, telephone numbers and addresses of the site owner, the contact person, and the environmental manager.

7. What is the acreage of the site?

8. Is the site subdivided into one or more legal lots of record?

_____ Yes _____ No

9. Are there any buildings currently on the site?

_____ Yes _____ No

If yes, describe their size, age, method of heating, construction materials, and any unusual features.

If yes, describe the nature of the tenants' business.

Describe the nature of the business conducted on the property.

10. Does the site contain prime farmland?

_____Yes _____No

11. Does the site have any unusual topographic features?

_____Yes _____No

12. Does the site slope(s) appear to be greater than 15 percent?

_____Yes _____No

13. Does the site require extensive grading or fill?

_____Yes _____No

14. Do you have any reason to suspect that the site might be affected by geologic hazard?

15. Is the site located near a body of water, such as a river, lake, stream, swamp, etc?

_____Yes _____No

16. Are utilities currently available on the site?

_____Yes _____No

SURROUNDING PROPERTIES

17. What are the surrounding community land uses?

18. Are there any residences, hotels, motels, institutions, hospitals, convalescent homes, schools or child care facilities, etc., within 500 feet of the subject property?

_____Yes _____No

19. Is the site location within a planned unit development and/or is it subject to covenants and restrictions?

_____Yes _____No

20. Do you have any reason to suspect that the project is inconsistent with existing zoning and surrounding community land uses?

_____Yes _____No

21. Do you have any reason to suspect that the project is inconsistent with the local Master Plan (define) or proposed community long-range plans?

_____Yes _____No

ACCESS/TRANSPORTATION

22. Does the site have access constraints?

_____Yes _____No

23. Does the site have access to public rights-of-way?

_____Yes _____No

24. Is the site located near a congested intersection(s)?

_____Yes _____No

25. Does the site have access to public transportation?

_____Yes _____No

26. Based on the projected size and occupancy of the project, will there be impacts on public transit systems?

_____Yes _____No

HISTORIC SITES

27. Is the site/building located within an Historic District,
on an historic site or on the National Historic Register?

_____ Yes _____ No

28. If there is a building on site, do you have any reason to
suspect that it is architecturally significant?

_____ Yes _____ No

29. If there is a building on site, do you have any reason to
suspect that it is greater than 50 years old?

_____ Yes _____ No

30. Are there curb cuts, footings, or other signs of former
buildings on the site?

_____ Yes _____ No

31. Has NIH taken into account whether an historic property will be affected by this project?

_____ Yes _____ No

ENVIRONMENTAL ISSUES

32. During the site visit were any wildlife observed or was there evidence that wildlife might live on the site (e.g. nests, tracks, etc.)?

_____ Yes _____ No

33. Were any air emissions from the site observed, or is there reason to suspect that these occurred in the past?

_____ Yes _____ No

If yes, could you ascertain their source?

34. Were water discharges from the site observed, or is there reason to suspect that these occurred in the past?

_____Yes _____No

If yes, could you ascertain their source?

35. What is the source of drinking water for the site (e.g., wells, municipal water supply)?

36. Is there evidence of Underground Storage Tanks (USTs) such as vent pipes, fill caps, etc., on the site?

_____Yes _____No

If yes, did you see any evidence of spills from the tanks?

37. Were any aboveground storage tanks present on the site?

_____Yes _____No

If yes, did you see any evidence of spills from the tanks?

38. If there is a building on site, was it constructed prior to 1980?

_____Yes _____No

39. If there is a building on site, did you see any materials that you suspect contain asbestos?

_____Yes _____No

40. Is there any evidence suggesting the past use(s) of the site/building?

_____Yes _____No

41. Does the site/building contain electrical transformers?

_____Yes _____No

If yes, are the transformers labeled and do the labels indicate whether the transformers contain PCBs?

_____Yes _____No

If yes, do the labels indicate whether the transformers are owned and maintained by the local utility company?

_____Yes _____No

42. Does the site contain vegetation?

_____Yes _____No

If yes, was any of the vegetation stressed (i.e., wilting, dead, or otherwise unhealthy looking)?

43. Are there any stains on the soil or in the buildings?

_____ Yes _____ No

44. Is there any other evidence of spills?

_____ Yes _____ No

45. Are there any drums, cans, or other containers located on the site?

_____ Yes _____ No

If yes, did they contain labels describing their contents?

_____ Yes _____ No

If yes, what did they contain?

If yes, was there any evidence that they had leaked?

_____ Yes _____ No

46. Are there any chemicals stored on the site, including pesticides, paints, solvents, and/or cleaners?

_____Yes _____No

If yes, did you see any evidence of spills?

_____Yes _____No

47. Is there evidence of general dumping on the site?

_____Yes _____No

If yes, note the number of dumpsites.

If yes, note the kinds of materials at the site, if recognizable.

48. Is there evidence of drilling, clearing/grubbing, or dirt moving on the site?

_____Yes _____No

If yes, describe.

49. Are there any ponds, pits, swamps, ditches, or other locations with suspicious color or odor?

_____Yes _____No

50. Does the site have any special circumstances or indicators of significance which may cause it to have significant contamination?

_____Yes _____No

OTHER

Are there any other conditions or circumstances that might impact the proposed project, either positively or negatively?

_____Yes _____No

SIGNATURES

DSFM: Signature: _____ Date

DES: Signature: _____ Date

DS: Signature: _____ Date

ICD: Signature: _____ Date

List of Attachments:

Appendix 3. Seller's Checklist:

Instructions

The following questions regarding environmental, health and safety matters are to be answered by the current Seller of the property. If the current Seller lacks sufficient information, then the Seller should make appropriate inquiries of his/her employees or others having such knowledge.

The phrase "site" encompasses both the real property and any/all improvements on the real property.

If any question is answered in the affirmative, all relevant documentation in the current Seller's possession is to be provided to NIH and describe in relevant detail the reason for your answer. Attach any additional sheets, as needed. Additional room is provided at the end of each section for responses.

PROJECT INFORMATION

1. Provide the property name and telephone number(s) and address(es) of the property Seller(s), the contact person(s), and the environmental manager.
2. Provide the names and titles of the persons completing this Checklist.
3. Provide the address of the site, including the county in which it is situated.
4. What is the acreage of the site? _____ Acres
5. Describe the buildings on the site, including their size, age, method of heating, and construction materials.
6. Describe the nature of the previous businesses conducted on the site.
7. Provide copies of all certificates of occupancy for the buildings on the site.
8. Provide a copy of the current business license for the Seller of the site.
9. If there are any tenants in the building(s), describe the nature of their business(es).
10. Is the site in compliance with applicable zoning and similar local requirements?

_____Yes _____No

11. Provide copies of all zoning violations.
12. Provide copies of all special use permits, special exceptions, variances, and any other zoning and/or land use permits that are applicable to the site.
13. Are there any residences, hotels, motels, institutions, hospitals, convalescent homes, schools, child care facilities, etc., within 500 feet of the subject site?

_____Yes _____No

14. Has the surrounding community complained about the site regarding noise, traffic, etc?

_____Yes _____No

15. Provide copies of all permits authorizing storage and/or use of any hazardous substance on the site.

CLAIMS AND PROCEEDINGS

16. Is the site now, or has it been in the past, the subject of a lawsuit or an administrative proceeding with respect to environmental issues? This includes any consent decree, administrative order, compliance schedule or any agreement or informal understanding with any governmental authority.

_____Yes _____No

17. Is the site the subject of any threatened or intended lawsuit or administrative proceeding? This includes any citations, notices of violation, warnings, or complaints from any governmental authority.

_____Yes _____No

18. Is the site the subject of any proceedings under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, or Superfund) relating to the release or threatened release of a hazardous substance from the property?

_____Yes _____No

19. Have any violations of a law, regulation or permit relating to the site been reported to any governmental authority?

_____ Yes _____ No

20. Are there any violations that have not been so reported?

_____ Yes _____ No

21. Does anyone involved with the site, including the owner, operator, or manager(s), believe that circumstances may exist which could result in claims being asserted against the site?

_____ Yes _____ No

AIR POLLUTION REQUIREMENTS

22. Are there any sources of emissions from the site, including fugitive emissions?

_____ Yes _____ No

If yes, what is the source of the emissions?

23. Are there any emissions monitoring data?

_____ Yes _____ No

If yes, is the site in compliance?

_____ Yes _____ No

24. Are permits or other controls in compliance with air quality requirements?

_____ Yes _____ No

WATER POLLUTION REQUIREMENTS

25. Are there any wastewater discharges (including any stormwater runoff or seepage) from the site?

_____ Yes _____ No

26. Are there any effluent monitoring data?

_____Yes _____No

27. Are permits or other controls in compliance with water quality requirements?

_____Yes _____No

28. Are any structures located in any waterway, floodplain, coastal or wetlands area or other such specially-designated area?

_____Yes _____No

29. Has the owner or operator done any work to place or dredged fill materials in any waterway or wetlands area?

_____Yes _____No

30. Has the site had any spills of oil or hazardous substances (within the meaning of the Federal Water Pollution Control Act) into any waterway or wetlands area?

_____Yes _____No

31. Is oil handled on the property subject to being discharged into navigable waters and is there a Spill Prevention Control and Countermeasure Plan?

_____Yes _____No

32. Are injection wells located on the property?

_____Yes _____No

33. Is or has the site been subject to a remedial action plan imposed or required by any local, State, or Federal agency?

_____Yes _____No

WASTE REQUIREMENTS

Waste is any solid, liquid, semi-solid or contained gaseous material that has been discarded, including hazardous substances. For the purpose of this Checklist, "other substances" means petroleum products, hazardous substances,

asbestos, lead-based paint and lead in drinking water.

34. What types of Wastes or other substances have been or are generated by the site?

35. Have any Wastes or other substances been disposed of on the site by any person at any time?

_____ Yes _____ No

If yes, what was disposed of, when was it disposed of, and where was it disposed of?

36. Have arrangements been made to transport, treat, or dispose of any Wastes or other substances from the subject site n any other property?

_____ Yes _____ No

If yes, what was disposed of, when was it disposed of, and where was it disposed of?

37. Are any of the site's Wastes or other substances recycled, reclaimed or reused, whether by the property's owner or operator or any other entity?

_____ Yes _____ No

38. Are there any investigations or inquiries relating to Wastes or other substances from the site?

_____ Yes _____ No

39. Do you have any knowledge of any investigations or inquires relating to Wastes or other substances from adjoining properties?

_____ Yes _____ No

40. Is or has the site been subject to a remedial action plan imposed or required by any local, State, or Federal entity?

_____ Yes _____ No

41. Are there records of the location, quantity and chemical composition of all Wastes or other substances disposed

of on site?

_____ Yes _____ No

If yes, provide those records.

SPILLS

42. Have there been any known or suspected spills or releases of hazardous materials on the site, including small incidental releases?

_____ Yes _____ No

If yes, describe the type of material that was released.

If yes, provide the location of each spill or release.

If yes, provide the date of each release.

If yes, provide the amount of material released each time.

If yes, describe any samples taken and provide any available sampling results.

If yes, describe any clean-up activities that took place, and provide any available documentation.

TANKS

43. What is the age, location, size, type, and contents of any Underground Storage Tanks (USTs) or Aboveground Tanks located on the site (collectively "tanks")?

44. Have any tanks ever been removed from the site?

_____ Yes _____ No

45. When were the USTs last tested, and what were the results of those test?

46. Is there any reason to know or suspect that the tanks have ever leaked, including during filling?

_____ Yes _____ No

47. Has any overfilling of tanks occurred?

_____ Yes _____ No

48. Are the tanks properly registered?

_____ Yes _____ No

If yes, provide copies of current registration certificates.

49. Do you have any knowledge of any UST on any adjoining properties?

_____ Yes _____ No

USE OR STORAGE OF CHEMICALS

50. a. Have polychlorinated biphenyls (PCBs) ever been used or located on the site, including in any structure or building?

_____ Yes _____ No

50. b. Have materials containing asbestos ever been used or located on the site, including in the structure of any building?

_____Yes _____No

50. c. Are chlorofluorocarbons(CFCs) in use or have they ever been used or located on the site, including in the structure of any building?

_____Yes _____No

51. Have any pesticides, insecticides, fungicides, herbicides, defoliants, desiccants, arsenic or plant growth regulators, etc. been used on the site?

_____Yes _____No

HEALTH AND SAFETY REQUIREMENTS

52. What is the source of the potable water to the site?

53. Are there any potable water wells within 500 feet of the subject site?

_____Yes _____No

54. a. Are there any reports (including oral reports) or logs of occupational injuries or illnesses sustained by the site's employees?

_____Yes _____No

54. b. Are there any reports (including oral) of complaints by building occupants regarding indoor air quality?

_____Yes _____No

55. Has the site ever been subject to an OSHA, state or local inspection?

_____Yes _____No

56. If yes, when, and what was the outcome?

REPORTS

57. Are there any Material Safety Data Sheets for hazardous materials used on the site?

_____Yes _____No

58. Are there any health or environmental effect studies, statements or assessments, internal audit or inspection reports, or risk analyses relating to environmental health or safety matters associated with the site?

_____Yes _____No

SELLER'S CERTIFICATION

Seller certifies that he or she understands that the information provided herein is material representation of fact upon which the Government, acting through the NIH, will rely when making a site selection determination.

SELLER'S SIGNATURE:

TITLE _____
(If Corporation/Partnership)

DATE _____

Appendix 4. Site Purchase Recommendation Report:

Format. The paper used shall be of size 8+ x 11 inches. All pages should be numbered consecutively including all exhibits. The report shall contain tabulations, schedules, exhibits, and other data necessary to set forth all the site selection factors considered by the Site Evaluation team. In order to facilitate their removal for study and review purposes, maps, photographs, and other exhibits included in the addenda shall be placed in 8~ x 11, inch envelopes.

Outline. The report will be divided into four parts as outlined below. Within these parts the outline may vary to the extent that the character and size of the project and the community in which it is to be located may be such as to call for additional data in some cases, and less data in others. Generally, however, all items must be considered by the Site Evaluation Team and included in the report. The omission of any item shall be explained in the report.

PART I - INTRODUCTION

1. TITLE PAGE. The Title Page shall include the same

information that is shown on the cover, i.e., (1) the name of the project, and (2) the name of the city, county, and state.

2. TABLE OF CONTENTS.
3. LETTER OF TRANSMITTAL. The letter of transmittal shall be in the form of a memorandum from the Site Evaluation Team to the ADRS. It shall contain the following information:
 - a. The identity of the project.
 - b. The date(s) on which the site investigation was made.
 - c. The identity of the two outstanding potential sites recommended by the Site Evaluation Team and the estimated acquisition, relocation and special preparation costs of each of those sites.
 - d. Total amount of funds available for site acquisition and relocation.
4. AERIAL PHOTOGRAPH OR MAP. The delineated area. Federal buildings, civic centers, the central business district of the city, urban renewal projects, in or on the periphery of the delineated area for all sites investigated, and the two recommended sites are to be identified on the photo or map.

PART II - FACTUAL DATA

5. SITE REQUIREMENTS. This shall be a statement of the specific site requirements i.e., POR.
6. THE SITE EVALUATION.
 - a. The date on which the Site Evaluation Report was prepared.
 - b. The date of notification to planning agencies and local elected officials, a brief summary of results of consultation, and a listing of parties notified.
 - c. The date(s) on which the Site Evaluation was conducted.
 - d. The name and official position of each member of the Site Evaluation Team. (Include members

from other ICDs).

- e. Total number of offered, and unoffered but potential, sites inspected by the site team.

RT III - ANALYSIS AND CONCLUSIONS

- 7. **SYNOPSIS OF PROPERTIES OFFERED FOR INSPECTION.** In this section of the report, list the properties offered for inspection, stating the following for each property:
 - a. Location
 - b. Size (dimension and square footage).
 - c. Name of offeror(s) and the capacity in which he/she (they) acted in making the offer.
 - d. Name of purported owner(s).
 - e. Asking price, if known.
 - f. Whether the offered site is within the delineated area.
- 8. **ELIMINATION OF UNDESIRABLE SITES.**
 - a. A tabulation, giving the reasons for the elimination of undesirable sites, shall be prepared. Sites having similar adverse characteristics such as too remote, too small, unfavorable topography, too costly, unfavorable surroundings, etc., may be grouped under the appropriate classifications as reasons for elimination.
 - b. All sites, except the two outstanding locations that meet the minimum site requirements as stated in the POR.
- 9. **EVALUATION OF SOCIOECONOMIC FACTORS CONCERNING THE TWO RECOMMENDED SITES**
 - a. These sites shall be evaluated in terms of (a) accessibility by the general public by automobile, (b) accessibility by the agency's employees by: 1) public transportation and by 2) automobile, (c) accessibility by public transportation to low and moderate income

housing, (d) availability of off-street parking, (e) safety for the facility and agency personnel, (f) unemployment rate, and (g) median family income, to satisfy E.O. 11412. Evaluation will include consultation with Federal agencies as appropriate.

- b. Summarize results of consultation with the Department of Housing and Urban Development regarding availability of low and moderate income housing for employees.
- c. Only the conclusion of 9.a and 9.b above are to be included in the narrative portion of the report.

10. RECOMMENDED SITES: Each of the recommended sites shall be discussed with respect to conformity to site specifications as set forth in the POR. The narrative concerning each of the recommended sites shall describe the dimensions of the site; its shape and total area; street frontages, estimated cost, including severance damages, if any; and topographical characteristics; and shall discuss whether the recommended site is at a location or within an area for which civic officials have expressed a preference. Any consideration that will result in the expenditure of funds for retaining walls, rock excavation, construction, removal or relocation of utilities; demolition of structures; special construction features required in the proposed building due to topographical features; or sub-surface conditions shall be explained in detail. An estimate as to the cost of performing any and all necessary work of this type in connection with the construction of the proposed building or preparation of the site shall be furnished. The most significant advantages and disadvantages of each of the recommended sites shall be discussed. The discussion of the advantages and disadvantages of each site may consider the following, as well as other appropriate factors:

- a. Project-environmental impact evaluation.
- b. Neighborhood environment, and the existence of objectionable smoke, noise, dust, obnoxious odors, as to effect on project.
- c. Sub-surface conditions.

- d. The nature of existing on-site improvements and the number of owners and/or tenants to be relocated if the property is acquired. Include statements regarding the availability of decent, safe, and sanitary housing to accommodate those relocated.
- e. Location in relation to the central business district and the direction and rate of growth (decline) of that area.
- f. Zoning and planning considerations having a significant effect on the site and design of the building.
- g. Public sentiment.
- h. Flood plain evaluation.
- i. Historic properties evaluation.

Only the conclusions of the evaluation of the above factors are to be included in the narrative portion of the report.

- 11. CORRELATION: The relative advantages and disadvantages of the recommended sites shall be weighed, due consideration being given to all factors pertinent to the selection of a site.
- 12. CONTAMINATION ASSESSMENTS: Discuss in summary form any available NEPA reports or documentation.
- 13. CONCLUSIONS AND RECOMMENDATIONS:
Under this heading, the conclusion of the site team with respect to the first and second choice shall be stated.
- 14. APPROVAL BY THE ADRS: The ADRS shall indicate approval of the conclusions and recommendations of the Site Evaluation Team by affixing his/her signature to the report. The report shall be forwarded to the NCPC for final approval.

PART IV - EXHIBITS AND ADDENDA

The following exhibits, appearing in the order listed below, should be included in each Site Purchase Recommendation Report. In those instances where appropriate maps are not

available, such items may be excluded from the report provided the reason for the exclusion is stated.

15. Photographs of two recommended sites.
16. Drawing showing types of improvements on the two recommended sites.
17. Site Evaluation Checklist and Seller's Checklist.
18. Development plan for each of the two recommended sites.
19. Copy of current report from State Historic Preservation Officer.
20. Copy of HUD's written report on housing for employees.
21. References: identity of persons, public records, and other sources providing data which was included in the report.
22. NEPA documentation available.
23. Other appropriate exhibits.

Appendix 5. Real Estate Purchase Agreement:

National Institutes of Health

REAL PROPERTY PURCHASE AGREEMENT

This Real Property Purchase Agreement (the "Agreement") is entered into as of _____, 199____ (the "Effective Date") by and between the National Institutes of Health, As Agent For THE UNITED STATES OF AMERICA (the "Government") and _____ ("Seller").

1. Agreement to Sell

In consideration of the mutual covenants in this Agreement, Seller agrees to sell and convey to the Government and the Government agrees to purchase the following property:

- (a) That certain tract of land, containing approximately _____ square feet of land, located in

the
City/Town of _____, County of
_____, State
of _____, described in Exhibit A,
together with all rights and appurtenances pertaining to
such land, including without limitation all mineral
rights, riparian rights, easements, and any right, title and
interest of Seller in and to adjacent streams, stream
beds, streets, alleys and rights-of-way (all of such land,
rights and appurtenances are referred to as the "Land");

(b) All improvements, structures and fixtures located or
under construction on the Land (collectively referred to
as the "Improvements");

(c) All equipment, machinery, vehicles, supplies,
furniture and all other tangible personal property,
excluding any items listed in Exhibit B, now owned by
Seller and located on the Land or used or to be used in
connection therewith or with the Improvements
(collectively referred to as the "Personal Property");

(d) All contract rights and other intangible rights owned
by Seller (including without limitation all permits,
licenses, warranties, guaranties, service contracts, and
trade names that are related or appurtenant to the Land,
Improvements, or Personal Property (such rights are
collectively referred to as the "Intangible Property").

(e) All leases that cover any portion of the Land and/or
the Improvements and are permitted under Section 12
(c) of this Agreement to be in effect at Closing, together
with all rights of Seller, including all security deposits,
under such leases (the "Continuing Leases").

The Land and the Improvements are sometimes
collectively referred to herein as the "Real Property."
The Real Property, the Personal Property, the Intangible
Property and the Continuing Leases are sometimes
collectively referred to herein as the "Property."

2. Purchase Price

The purchase price for the Property (the "Purchase
Price") shall be _____ and _____/100
Dollars \$_____. If the Property contains fewer
square feet of land than stated above, the Purchase Price

shall be reduced.

3. Defined Terms

(a) Capitalized terms used in this Agreement shall have the meanings defined in Section 3 (b) below or elsewhere in this Agreement. The attached Index sets forth the location of definitions in this Agreement.

(b) As used in this Agreement, the following terms have the following meanings:

(1) "Affiliate" means (i) any Person for whose conduct Seller is or may be held responsible under any Environmental Law, or who is or may be held responsible under any Environmental Law for Seller's conduct, and (ii) any "affiliate" of Seller as defined in Volume 48, Code of Federal Regulations, Part 19.101 (Small Business and Small Disadvantaged Business Concerns Size Standards - Explanation of Terms).

(2) "Agency Letter" means, with respect to any Environmental Condition or Environmental Violation, a letter from the Government Entity or Entities charged with the enforcement of the applicable Environmental Laws stating that: (i) all Remediation Actions have been completed to the satisfaction of such Government Entity or Entities, and no further action will be required, with respect to such Environmental Condition or Environmental Violation; or (ii) no action will then or thereafter be required by such Government Entity or Entities with respect to such Environmental Condition or Environmental Violation.

(3) "Certification" means, with respect to any Environmental Condition or Environmental Violation, a report, issued by an independent environmental engineer satisfactory to the Government, stating that in the engineer's opinion, it is unlikely that any Remediation Action (beyond any Remediation Actions then completed) with respect to the applicable Environmental Condition or Environmental

Violation will be required by the Government Entity or Entities charged with the enforcement of applicable Environmental Laws. Unless the Government agrees otherwise, the conclusions set forth in any Certification shall be based on consultations by the engineer with such relevant Government Entity or Entities.

(4) "Claim" means any actual or threatened suit, proceeding or claim of any kind that does or may result in any Liability, contingent or otherwise, being incurred by the Government or its successors in title to the Property. Without limiting the preceding sentence, "Claim" includes any intragovernmental or inter-governmental demand, directive, order, guideline, or requirement of any Government Entity other than the National Institutes of Health.

(5) "Displaced Person" means any Person (including Seller, if applicable) who must vacate the Property, or must move his, her or its personal property from the Property, as a direct result of (i) a notice to Seller of the Government's intent to acquire the Property, (ii) the delivery of an initial offer of just compensation from the Government to Seller or Seller's representative to purchase the Property, or (iii) the Government's acquisition of the Property; provided, that "Displaced Person" shall exclude, without limitation, any "person not displaced" as defined in 49 Code of Federal Regulations 24.2(g)(2) (Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs Definitions).

(6) "Environment" means soil, surface waters, groundwater, land, stream sediments, surface or subsurface strata, ambient air, and any environmental medium.

(7) "Environmental Condition" means any condition with respect to the Environment that (i) directly or indirectly involves or relates to the

Property, and (ii) could or does result in any Liability of, or Claim against, Seller or the Government by any party. "Environmental Condition" includes, without limitation, any presence of Hazardous Materials at the Property, or at other property as a result of activity at the Property.

(8) "Environmental Law" means any Legal Requirement pertaining to the Environment or Hazardous Materials, whether such Legal Requirement exists as of the date hereof or is subsequently created.

(9) "Environmental Violation" means any violation of an Environmental Law.

(10) "Environmental Permit" means any permit, license, approval, consent, or authorization related to the Environment issued by a Government Entity.

(11) "Government Entity" means any government agency, department, office or other body or entity, including any judicial authority, at the Federal, state or local level.

(12) "Hazardous Material" means any pollutant; contaminant; toxic substance; hazardous waste; hazardous material; hazardous substance; petroleum or petroleum product; pesticide; radon; asbestos; or polychlorinated biphenyls; and includes, without limitation, any materials defined in or regulated by any Environmental Law. Underground storage tanks shall be presumed to contain or to have contained Hazardous Materials unless Seller establishes otherwise.

(13) "Lease" means any lease, license, or other agreement or right, written or oral, granting any person any right to use or occupy any portion of the Real Property.

(14) "Legal Requirement" means any law, regulation, rule, code, directive, guideline, ordinance, by-law, order, injunction, decision,

determination or other requirement of any Governmental Entity with jurisdiction over the Property.

(15) "Liability" means any liability, loss, demand, penalty, fine, settlement, damages (including foreseeable and unforeseeable consequential damages), response cost, remediation cost, or inspection cost, and any expenses (including with limitation all attorney and consultant fees, investigation expenses and laboratory and litigation costs) of whatever kind or nature, known or unknown, contingent or otherwise, and any interest thereon.

(16) "Notice" means a written notice given in accordance with Section 28 (h).

(17) "Person" or "person" means any individual or entity.

(18) "Release" means any releasing, spilling, leaking, pumping, putting, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping into the Environment.

(19) "Remediation Action" means any cleanup, removal or other action to correct or mitigate any Environmental Condition or violation of an Environmental Law.

(20) "Threat of Release" means a substantial likelihood of a Release that would violate any Environmental Law or which would require action to prevent or mitigate damage to the Environment that may result from such Release.

4. Time and Location of Closing

In consultation with DSFM, the OGC will schedule the time, date, and location for closing the sale. The DSFM will attend the closing and provide necessary assistance upon OGC's request. This step should normally be completed within 10 working days following receipt of the NCPC or its counterpart organization's final comments and recommendations on the purchase of the property.

The consummation of the purchase and sale of the property contemplated hereby should take place at a mutually agreed upon time on the latest of the following dates:

(a) the date sixty (60) days after expiration of the Study Period (i.e., a period of up to 270 days following the Effective Date of the Seller's agreement to sell and the Government's agreement to purchase);

(b) the date sixty (60) days after expiration of the Title Review Period;

(c) the date sixty (60) days after completion of any required Remediation Action, or, if applicable, the date sixty (60) days after the Government agrees in writing that no Remediation Action is necessary; or

(d) the date sixty (60) days after completion of any casualty restoration provided, however, that the Government may elect a date earlier than the date determined above if the NIH first gives Seller at least thirty (30) days' notice, specifying the date.

5. Items to be Furnished by Seller

Within twenty (20) days after the Effective Date, Seller shall, at Seller's expense, deliver to the Government the following items:

(a) A current "as-built" survey of the Real Property together with a metes and bounds description of the Land, certified to the Government by a licensed surveyor acceptable to the Government in its reasonable judgment (the "Survey"). The Survey shall clearly show, without limitation, the location of the point of beginning and all boundary points and lines, all markers found or set, all improvements, flood plains, building setback lines, easements, access to existing, dedicated streets, and all matters disclosed by the Title Commitment. The Survey shall also conform to any reasonable

requirements provided by the Government to Seller, and shall be sufficient to allow the Title Company to issue the Title Policy required by this Agreement.

(b) A copy of the approved subdivision plat, including the Land, showing that the Land is composed entirely of one or more whole legal lots.

(c) Copies of all service contracts in effect with respect to all or any part of the Property, together with a schedule that identifies all service contracts and separately identifies any service contract that is not expressly terminable upon thirty (30) or fewer days notice. The Government shall have the right but not the obligation to assume any service contract.

(d) Copies of all warranties and guarantees covering the Improvements or any item of the Personal Property.

(e) An inventory of the Personal Property.

(f) Evidence of all ad valorem tax assessments of the Property for the five tax years prior to the Effective Date.

(g) A schedule setting forth all utility charges for the Property for the current and the two preceding calendar years.

(h) Copies of all certificates of occupancy and other governmental licenses, permits or approvals relating to any portion of the Property.

(i) Evidence that the Property is covered by insurance through the Closing Date as required in Section 8 (a).

(j) A set of "as-built" plans and specifications for the Improvements.

(k) A copy of Seller's deed to the Property.

(l) A copy of Seller's policy of title insurance, if any.

(m) A completed Seller's Checklist in the form supplied by the Government.

(n) Copies of all documents, records, correspondence and information in Seller's possession or control or available to it concerning (i) Environmental Conditions relevant to the Property or any activities thereon, including without limitation all spill control plans and environmental agency reports and correspondence, or (ii) on-site (or off-site to the extent related in any way to the Property) generation, treatment, storage, or disposal of Hazardous Materials. Seller shall have an ongoing obligation to provide to the Government copies of any additional such documentation or information that becomes available to Seller after the Effective Date, within five days after any such documentation or information becomes available to Seller.

(o) A current schedule (the "Rent Roll") showing (as of the last day of the month preceding the month in which falls the Effective Date) a list of all Leases and all leasees, subleases and any other Persons who occupy or have any right to occupy the Property (the "Tenants"), the space currently occupied by each Tenant, the commencement and termination dates of each Lease or other arrangement, the amount of monthly rent and other payments, the amount of delinquent rent (if any), the amount of the security deposit and any prepaid rent, the nature and amount of any concessions or allowances, and the number and period of any renewal options.

(p) Copies of all Leases.

(q) A written statement from each Tenant, other than (i) Tenants under Continuing Leases and (ii) Tenants listed in Exhibit C, that such Tenant is not a Displaced Person and disclaims to seek

compensation of any kind from the Government by reason of the Government's actual or proposed acquisition of the Property.

6. Inspection Right

(a) Before and after Closing, Seller shall make available to the Government for inspection during normal Government business hours at (as Seller elects) Seller's offices, the Property or a government office, all books, records, data (including computer data and software in any form), financial statements, financial information, and supporting documents and instruments relating to the Property and its operation and maintenance (the "Data"). The Data shall include all information relating to the Property and its operation and maintenance possessed by, in the control of, or available to Seller, and shall include, without limitation, all lease applications, Tenant correspondence and credit reports. Upon Government request, Seller shall, at Seller's expense, promptly provide the Government with copies of any or all Data. The originals of all Data shall be included in the Personal Property.

(b) Before Closing, the Government may enter upon the Property during business hours, and at all other times upon reasonable Notice to Seller, and may, at the expense of the Government, make any audits, appraisals, inspections, tests, and other investigations of the Property, including any Contamination Assessment(s), that the Government deems necessary or desirable. Seller shall cooperate fully with and provide all access and information in Seller's possession or control that may be desirable for such investigations.

(c) Before Closing, the Government may cause an independent environmental contractor chosen by the Government in its reasonable discretion (an "Independent Contractor") to inspect, audit and test the Property at the Government's expense for the existence of any Environmental Conditions and any Environmental Violations.

Such inspection, audit, and/or testing is referred to herein as the "Contamination Assessment."

The scope, sequence, and timing of the Contamination Assessment shall be at the sole discretion of the Government.

(d) To the extent possible, the Government shall repair, at its expense, any damage to the Property caused by any tests or other activities authorized under Section 6 (b) or 6 (c), if (i) the Government elects to make such repairs, (ii) such damage poses a safety hazard or interferes with Seller's use of the Property, or (iii) this Agreement is terminated for any reason other than Seller's default. To the extent repair is impossible or the Government fails to make any repair required under this Section 6 (d), Seller shall be entitled to pursue any available legal remedy for its actual damages.

(e) If the Contamination Assessment reveals, or at any time prior to the Closing Date the Government otherwise becomes aware of, the existence at the Property of any Environmental Condition or any Environmental Violation, the Government shall give Seller Notice thereof, and:

(1) For thirty (30) days after Notice to Seller of such Environmental Condition or Environmental Violation, Seller shall have the right to present evidence to the Government that no Remediation Action is appropriate. No Remediation Action by Seller shall be required with respect to a particular Environmental Condition or Environmental Violation if (i) no Remediation Action is required to be undertaken with respect thereto by any Environmental Law, as established to the reasonable satisfaction of the Government by an Agency Letter or a Certification, (ii) no Remediation Action is necessary, in the opinion of the Government, to avoid the possibility of a Claim against the Government arising out of the Environmental Condition or

Environmental Violation, and (iii) the Environmental Condition or Environmental Violation does not affect or limit the market value or use of the Property.

(2) If Seller fails to establish, in accordance with the preceding paragraph, that no Remediation Action is required with respect to an Environmental Condition or Environmental Violation, the Government may in its discretion cause an Independent Contractor to provide a written estimate (the "Remediation Estimate") of the cost of all Remediation Actions necessary to remedy or cure the applicable Environmental Condition or Environmental Violation to the reasonable satisfaction of the Government. The Government shall, within fifteen (15) days after receipt by the Government, give Seller a copy of the Remediation Estimate.

(3) Either the Government or Seller may terminate this Agreement by Notice to the other within thirty (30) days of the terminating party's receipt of the Remediation Estimate if, either the cost of the Remediation Estimate is deemed excessive, or the time the Remediation Action would take is deemed excessive.

(4) If this Agreement is not terminable under Section 6 (e) (3), or if neither party elects to terminate this Agreement under Section 6 (e) (3), the Government may elect either (i) to proceed with Closing and assume responsibility for undertaking actions sufficient, in sole judgment of the Government, to remedy the applicable Environmental Condition or Environmental Violation, and to deduct from the Purchase Price an amount equal to the Remediation

Estimate, in which case the Government shall refund or Seller shall pay, as applicable, the difference between the Remediation Estimate and the actual costs of all Remediation Actions when established; or (ii) to (A) postpone Closing by the period the Government, after consulting with an Independent Contractor, estimates is needed to accomplish all Remediation Actions necessary to correct the applicable Environmental Condition or Environmental Violation, and (B) require Seller to undertake and complete, prior to the postponed Closing, all such Remediation Actions to the reasonable satisfaction of the Government. If Seller fails to complete any Remediation Action when required by this Agreement, the Government may pursue any legal and equitable remedies against Seller, and/or postpone Closing one or more times by the period the Government, after consulting with an Independent Contractor, deems reasonably necessary to complete such Remediation Action.

(5) If any Remediation Action by Seller includes the cleanup of Hazardous Materials, and applicable Environmental Laws do not establish a specific level of cleanup, the level of cleanup required by the Government shall not be more strict than the level then required, or reasonably expected by the Government to be required at a later date, by the Government Entities responsible for enforcing the applicable Environmental Laws, provided, however: (i) that the cleanup shall be sufficient so that the use of the Property is not affected or limited by the remaining level of Hazardous Materials, (ii) that the level of cleanup required shall be sufficient that the market value of the Property will not be materially reduced by the remaining

level of Hazardous Materials, and (iii) Seller shall provide an Agency Letter or Certification with respect to the cleanup.

(f) The information produced in connection with any Contamination Assessment is intended to assist any future determination whether any Liabilities are attributable, wholly or in part, to any Environmental Conditions or violations of Environmental Laws existing as of and/or prior to the Closing Date or arising from conditions existing as of and/or prior to the Closing Date, but such information shall not be conclusive with respect to such issues. (g) Nothing in this Agreement shall be construed to excuse Seller from complying with all Environmental Laws, regardless of whether this Agreement is terminated.

7. Study Period

At any time during the period (the "Study Period") of two hundred and seventy (270) days following the Effective Date, the Government may, for any reason (or for no reason) in the Government's sole, absolute and unfettered discretion, terminate this Agreement by giving Notice to Seller. The Study Period shall be extended by one day for each day beyond the delivery deadline in Section 5 that Seller fails to deliver to the Government any of the items required by Section 5. The Government shall, after such termination of this Agreement, deliver to Seller a copy of any soils reports related to the Property prepared by or on behalf of the Government prior to or during the Study Period. Seller agrees that the Government's obligation to deliver any soils report is adequate consideration for this Agreement. Seller may not challenge the accuracy of any report or the reasonableness or soundness of any decision by the Government to terminate this Agreement pursuant to this Section.

8. Seller

Seller covenants and agrees with the Government that from the Effective Date through the Closing Date:

(a) Seller shall maintain in force (i) fire and extended coverage insurance upon the Property

in an amount equal to the replacement cost of the Improvements and Personal Property, or in an amount of which Seller gives the Government Notice within ten (10) days after the Effective Date, if such amount is reasonable and customary for a prudent owner of similar property in the city or county where the Property is located, and (ii) public liability insurance in the same amounts as Seller has customarily maintained with respect to the Property.

(b) Seller shall manage and maintain the Property in accordance with standard practices of a prudent manager of property similar to the Property in the city or county where the Property is located.

(c) Except as specified on Exhibit D or permitted in Section 25, Seller shall maintain, repair and replace the Improvements in the same condition and repair as existed on the Effective Date, except for normal wear and tear, and Seller shall not remove any Property except for items of Personal Property that are obsolete or are replaced with items of equal or better quality.

(d) Seller shall comply with all Environmental Laws and other Legal Requirements applicable to the Property.

(e) Without the prior written consent of the Government, Seller shall not enter into, amend, modify, or breach any Lease, or terminate any Continuing Lease. Seller shall cause all Leases, except any Continuing Leases, to be terminated at Seller's expense effective at least ten (10) days prior to Closing. Without limiting the Government's obligations under applicable law to any Displaced Person, Seller shall, at Seller's expense, cause the Property to be vacated, except for the occupancy of Tenants under Continuing Leases, at least ten (10) days prior to the Closing Date.

(f) Seller shall not take any action to affect title to the Property other than to satisfy the

Government's title objections or to meet the requirements of the Title Company for issuance of the Title Policy.

9. Seller's General Representations

Seller represents and warrants to the Government as of the date that Seller executes this agreement and shall be deemed to represent and warrant as of the Closing Date that:

(a) Seller owns legal and equitable fee simple title to the Property, and, to the knowledge of Seller, holds such title subject only to those matters listed in Exhibit E. This Agreement is a valid, binding and enforceable obligation of Seller. Seller has full corporate or partnership, as applicable, power and authority to enter into and perform its obligations under this Agreement. Seller has obtained any and all consents and approvals (including without limitation all third-party or governmental approvals) required for Seller validly to perform Seller's obligations under this Agreement.

(b) Except as disclosed on Exhibit F, there are no actions, suits or proceedings pending that affect any portion of the Property, involve the ownership or management of the Property, or affect Seller's ability to perform hereunder.

(c) All Data to be furnished to the Government by Seller shall, to the best of Seller's knowledge, is true and correct.

(d) There are no existing or threatened condemnation actions or special assessments affecting the Property.

(e) The Real Property is zoned , which classification permits the current use of the Real Property as of right. To the best of Seller's knowledge, no change in the zoning of the Property is pending or contemplated. The Property is not subject to any existing or (to Seller's knowledge) pending or contemplated historic, landmark, or similar designation. The

Property is not subject to any Legal Requirement controlling or stabilizing rent.

(f) The Real Property has direct access to public streets, and public water, sewer, telephone, electric and gas utilities are provided to the Real Property directly from adjacent public streets in quantities sufficient for the current use of the Property.

(g) Seller has not received any notice of any violation of any Legal Requirement pertaining to the Property that has not been complied with. The Property and the operation thereof are in full compliance with all Legal Requirements, and Seller has all permits and licenses required for the present use of the Property. The Property includes no "wetlands" within the meaning of any Legal Requirement. To the best knowledge of Seller, no part of the Property has ever been graded, filled, or otherwise altered in violation of any Legal Requirement. To Seller's knowledge, the Property is not part of the habitat of any endangered or protected species as defined in any Legal Requirement.

(h) Seller has not received any notice from any insurance company of any defect or inadequacy in the Property that has not been corrected.

(i) To Seller's knowledge, there are no unpaid bills or claims in connection with the construction or repair of the Improvements or other work performed or material purchased or services furnished in connection with the Improvements, except repair bills incurred in the ordinary course of the business, all of which shall be paid by Seller on or before the Closing Date.

(j) No portion of the Property (including, without limitation, rent or security deposits to be conveyed to the Government hereunder) shall be subject at the Closing to the burdens or obligations of any management agreement or understanding, or subject to any service contract

that is not terminable by the Government upon thirty (30) or fewer days notice.

(k) (i) Copies of the Leases to be furnished by Seller to the Government for inspection shall be true and complete. (ii) There are no concessions, allowances, or agreements (written or oral) with any Tenant except as expressly noted in the Rent Roll. (iii) The Continuing Leases are in full force and effect and have not been modified or amended and no right of offset exists against the landlord thereunder. (iv) There are no uncured defaults by the landlord under any Lease, and to the knowledge of Seller there exists no default on the part of any Tenant under a Continuing Lease. (v) There are no outstanding construction or repair obligations on the part of the landlord, or any amounts owed by landlord to any Tenant, under any Lease. (vi) There are no prepaid rents or security deposits under any Lease except as disclosed on the Rent Roll. (vii) No brokerage or other finder's fees are due in relation to any Lease.

(l) Prior to (i) Seller's receipt of any written expression of Government intent to acquire the Property, (ii) the delivery to Seller of any Government offer of just compensation for the Property, and (iii) Seller's execution of this Agreement, Seller had elected to vacate the Property prior to the Closing Date, and had taken all necessary action to cause the Property to be vacated prior to the Closing Date by all Persons other than Displaced Persons listed in Exhibit C.

(m) Exhibit C correctly sets forth each Displaced Person's name, address, and telephone number, legal basis for occupancy, date of initial occupancy, business or other activity on the Property, and number of any employees or family members occupying the Property.

10. Seller's Environmental Representation

Seller represents and warrants to the Government as of the date Seller executes this Agreement, and shall be

deemed to represent and warrant as of the Closing Date, that:

(a) Each of Seller and its Affiliates has no liability under, has never violated, and is presently in compliance with all Environmental Laws applicable to the Property and any operations thereon, and, to the best of Seller's knowledge, there exist no Environmental Conditions with respect to the Property or any operations thereon, except as set forth on Exhibit G, Part 1.

(b) Except as set forth on Exhibit G, Part 2, (i) neither Seller, any Affiliate of Seller, nor to the best of Seller's knowledge any other person, has ever disposed of solid waste at the Property or has ever generated, manufactured, refined, transported, stored, handled, disposed, transferred, produced, or processed any Hazardous Materials at the Property (other than ordinary small quantities of household or office cleaning supplies and office supplies, such as photocopy supplies for ordinary office use, all of which have been used and disposed of in compliance with all Environmental Laws), and (ii) Seller and its Affiliates have no knowledge of the Release or Threat of Release of any Hazardous Material at or in the vicinity of the Property.

(c) No lien has been imposed on the Property by any Government Entity in connection with the presence on or off the Property of any Hazardous Material.

(d) Except as set forth on Exhibit G, Part 3, Seller and its Affiliates have not: (i) entered into or been subject to any consent decree, compliance order, or administrative order involving an Environmental Law with respect to the Property or activities thereon; (ii) received notice under the citizen suit provisions of any Environmental Law in connection with the Property or any operations thereon; (iii) received any request for information, notice, demand letter, administrative inquiry, or formal or

informal complaint or claim with respect to any Environmental Condition relating to the Property or any operations thereon; or (iv) been subject to or threatened with any governmental or citizen enforcement action involving an Environmental Law with respect to the Property or any operation thereon. Seller and its Affiliates have no reason to believe that any of the above will be forthcoming.

(e) Seller has all Environmental Permits necessary for its activities and operations at the Property and for any past or ongoing alterations or improvements at the Property, which Environmental Permits are listed on Exhibit G, Part 4. Seller is in full compliance with the terms and conditions of the Environmental Permits, and shall validly assign all Environmental Permits to the Government at Closing as part of the Intangible Property.

11. Title Commitment

(a) Within twenty (20) days after the Effective Date, Seller, at Seller's expense, shall cause a title company selected by the Seller (the "Title Company") to furnish to the Government (i) a current commitment to issue the Title Policy (the "Title Commitment"), showing the status of title to the Real Property, including all exceptions, including without limitation all easements, restrictions, rights-of-way, and covenants, if any, affecting the Real Property, and committing, at or below normal premiums, to issue the Title Policy to the Government at the Closing in the full amount of the Purchase Price; and (ii) complete and legible copies of all documents affecting title to the Property (the "Title Documents").

(b) All title exceptions on the Property, including liens, that can be eliminated by payment of a liquidated sum shall be eliminated by Seller at Seller's expense (i) before the Closing, or (ii) at Closing by applying such portion of the Purchase Price as may be necessary to cause the exception to be released

of record.

(c) The state of title to the Property must be approved on behalf of the Government by the Land Acquisition Section, Environmental and Natural Resources Division of the United States Department of Justice. No exception to title shall be deemed acceptable unless approved by the Government by Notice to Seller. Seller shall have thirty (30) days after receipt of a title objection to endeavor in good faith to (i) cure such objection and present a Title Commitment free of the matter(s) objected to, or (ii) agree in writing to cure the objection at Closing through the application of part of the Purchase Price as provided in Section 11 (b) above. If Seller fails to cure any objection or agree to cure it at Closing, as applicable, the Government may terminate this Agreement by Notice to Seller given within twenty (20) days following the expiration of such thirty day cure period. Any exceptions approved by the Government in writing are herein referred to as "Permitted Title Exceptions".

(d) Seller shall furnish a Closing Protection Letter from the title insurer to the Government assuming:

(1) Liability for conduct of the insurer's agents;

(2) Authority of closing agent to represent title insurance company.

12. Title to be Conveyed at Closing

At the Closing, Seller shall convey to the Government by general warranty deed, and by bill of sale and assignment where applicable, good, marketable, and enforceable fee simple title to all of the Property, free and clear of all liens, encumbrances, conditions, easements, and other matters affecting title to the Property, except for the following:

(a) The lien for general real estate taxes for tax years after the tax year in which Closing occurs.

(b) The Permitted Title Exceptions.

(c) The rights of tenants, as tenants only, under Leases that are (i) designated on Exhibit H as surviving Closing, or (ii) approved by the Government, in writing, to survive Closing. The Government may grant or withhold such approval in its sole discretion.

13. Title Policy

(a) Seller shall furnish to the Government at Closing, at the Seller's expense, the September 28, 1991 version (or any subsequent version approved by the Government) of the standard ALTA U.S. Government form of Owner's Policy of Title Insurance modified to the extent necessary to conform to the requirements of this Agreement (the "Title Policy") issued by the Title Company, in the Government's favor in the full amount of the Purchase Price, insuring the Government's indefeasible fee simple title to the Property subject only to the Permitted Title Exceptions and the policy exceptions permitted under Sections 13 (b) - 13 (d).

(b) The Title Policy exception for matters that would be disclosed by a survey of the Real Property shall be deleted, and the exception for rights of parties in possession shall be limited to the rights of Tenants, as tenants only, under any Continuing Leases listed in the Title Policy.

(c) The Title Policy exception for the lien for taxes shall be deleted, or if agreed by the Contracting Officer may be limited to tax years after that in which the Closing occurs and endorsed "Not Yet Due and Payable".

(d) The Title Policy may contain any standard exceptions that have been approved by the Government for inclusion in all ALTA U.S. Government policies of title insurance.

14. Conditions to Closing

Without limiting any other provision of this Agreement, the obligation of the Government to consummate the transactions contemplated hereby is subject to each of the following conditions:

- (a) The representations and warranties made by Seller herein shall be true on and as of the Closing Date as though such representations and warranties had been made on and as of the Closing Date.
- (b) Seller shall have performed all obligations and complied with all conditions required by this Agreement to be performed or complied with by Seller on or prior to the Closing Date.
- (c) Subject to the provisions of Section 25, the Property shall not have been adversely affected in any material way as a result of any fire, flood, act of God, or the public enemy, unavoidable cause, accident or other casualty.
- (d) The transactions to take place at Closing shall not be restrained or prohibited by any injunction or order or judgment rendered by any court or other governmental agency of competent jurisdiction, and no proceeding shall be pending in which any creditor of Seller or any other person seeks to restrain such transactions or otherwise to attach any of the Property.

15. Closing Procedure

- (a) At the Closing, Seller shall deliver or cause to be delivered each of the following items to the Title Company or other escrow agent selected by the Government and reasonably acceptable to Seller (the "Escrow Agent"):
 - (1) A duly executed and acknowledged general warranty deed conveying the Real Property and the Improvements to the Government (the "Deed").
 - (2) The Title Policy.
 - (3) A duly executed bill of sale conveying the Personal Property to the

Government.

(4) An instrument of assignment effectively assigning to the Government the Intangible Property.

(5) An affidavit of Seller showing Seller's federal tax identification number and stating whether Seller is a "foreign person" under Section 1445 of the Internal Revenue Code of 1986, as amended.

(6) All master keys to all locks on the Property (and an accounting for master keys in possession of others); the originals of all Data, the originals of all Continuing Leases; and a letter instructing all Tenants under continuing Leases to thenceforth pay all rent to the Government.

(7) A duly executed and acknowledged instrument of assignment, effectively assigning, transferring and setting over unto the Government all of the landlord's interest in all Continuing Leases, together with all security deposits and all rents, issues and profits accruing under the Continuing Leases after the Closing Date.

(8) A Rent Roll, updated to no less than three (3) days before Closing.

(9) Seller's certification that all representations and warranties made by Seller in this agreement are true and correct on the Closing Date.

(10) (A) a written disclaimer from any occupant of any part of the Property of any ownership interest in the Property, and (B) a written statement from each Person who was a tenant during the period beginning on the earliest of (i) the

date of this Agreement, (ii) the date of the Government's initial notice of intent to acquire the Property, and (iii) the date of the Government's initial offer of just compensation, and ending on the Closing Date, stating sufficient facts to determine whether such Person is a Displaced Person.

(11) An estoppel certificate from each Tenant under a Continuing Lease confirming the matters described in Section 9 (k) with respect to its respective Continuing Lease.

(b) At Closing, the Government shall deliver to the Escrow Agent
(i) a duly executed document assuming the obligations arising after Closing of the landlord under any Continuing Leases, and
(ii) the Purchase Price (adjusted by the net amount of closing credits and charges provided for in this Agreement) in the form of a federal wire transfer or Government check.

(c) Effective upon recording of the Deed, Seller shall deliver to the Government full and exclusive possession of the Property, subject only to the possession of Tenants under the Continuing Leases.

(d) Upon receipt of the adjusted Purchase Price and confirmation by the Government and Seller that the conditions to Closing are satisfied, the Escrow Agent shall record the original Deed in the appropriate land records. Upon recording of the Deed, the Escrow Agent shall deliver to the Government all other closing items received from Seller. Upon

receipt of all required items, the Government shall authorize the Escrow Agent to release the Purchase Price. After making proper credits and charges for prorations, Seller's share of the costs of Closing, and the release of all liens, the Escrow Agent shall deliver the remaining balance of the Purchase Price to Seller together with the assumption of Continuing Leases.

(e) The Deed, bill of sale, assignments, estoppel certificates, and any other closing documents required by this Agreement shall be in a form prepared by Seller and reasonably satisfactory to the Government. Seller shall submit the proposed form of all documents to the Government at least forty-five (45) days prior to Closing. The Government may elect at any time to take responsibility for drafting any document, in which case the document must be reasonably satisfactory to Seller.

(f) The Government and Seller shall deliver at Closing any additional documents and instruments that are (in the reasonable opinion of the Government's counsel, Seller's counsel or the Title Company) necessary to the proper consummation of this transaction.

16. Closing Costs and Prorations

(a) Property taxes for the current tax year and any other charges against the Property (other than special assessments or one-time taxes levied or assessed through the Closing Date, all of which shall be paid by Seller), rents under the

Continuing Leases, all other receipts generated from the Property, all utility and fuel charges and all other operating expenses relating to the Property shall be prorated between Seller and the Government effective as of the Closing Date based (where possible) on the actual amount of the expenses in question, and shall be paid or credited against the Purchase Price, as applicable, at the Closing. All prorations shall be determined by the Contracting Officer in his/her reasonable discretion based on a draft closing statement submitted to the Contracting Officer at least three (3) business days prior to Closing. All prorations shall be based on Seller retaining all benefits and burdens of the Property through the Closing Date. If on the Closing Date Seller has not received tax statements for the current tax year for the Property, taxes shall be prorated based upon the Contracting Officer's estimate, taking into account taxes for the immediately preceding tax year. After the Closing, upon receipt of bills for taxes or any other any item prorated at Closing based on an estimate of the bill, an accurate adjustment in the tax or other applicable proration shall be made, based upon the actual bill(s), by cash settlement between Seller and the Government.

(b) Seller shall deliver to the Government by way of a credit to the Government against the Purchase Price all prepaid rents and all security deposits made under the Continuing Leases on or before the Closing Date. After executing this Agreement, Seller shall not apply any security deposit under a Continuing Lease to any amount owed by the Tenant thereunder. If the rent for any Continuing Lease is delinquent on the Closing Date, the Government shall use reasonable efforts after the Closing Date to collect such rent on behalf of Seller. The Government shall not be required to institute any legal action to collect such rents. All rents collected after Closing (whether by Seller or the Government) shall be the property of the Government to be applied first to pay rents which remain unpaid by the Tenant(s) in

question for any period after the Closing Date, with any Closing (whether by Seller or the Government) shall be the property of the Government to be applied first to pay rents which remain unpaid by the Tenant(s) in question for any period after the Closing Date, with any excess to be paid by the Government to Seller.

(c) Seller shall be responsible for all closing costs, including recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the Property and other expenses incidental to the transfer of title to the Government.

17. Claims Arising After Closing

Seller shall be responsible for all Claims and Liabilities with respect to the Property existing or accrued through the Closing Date or arising out of any acts or omissions of the Seller occurring through the Closing Date, and Seller agrees to hold the Government harmless and indemnify the Government from any such claims. The Government shall be responsible to the extent provided under applicable law for all claims with respect to the Property based on events or circumstances occurring after the Closing Date, provided (i) Seller shall indemnify and hold the Government harmless for any payment that the Government makes under the Uniform Relocation Act listed in Exhibit C, and (ii) this Section does not limit Seller's liability under Section 18.

18. Environmental Liability

(a) The Government shall be responsible for:

(1) the amount of any Liability arising from (i) Hazardous Materials that are introduced to the Property after the Closing Date, or (ii) the post Closing disposal of Hazardous Materials from the Property to the extent that the Hazardous Materials were present at Closing but the Liability is caused by the Government's Environmental Violation in performing the disposal; and (2) the amount of any Liability arising or incurred with respect

to a Environmental Condition, or Environmental Violation, that existed at or prior to Closing and of which Seller provided the Government Notice prior to Closing, if and to the extent that (i) Seller provided a Certification with respect to such Environmental Condition or Violation (but Seller shall be responsible to the extent a Government Entity shall order or require further action with respect thereto); or (ii) Seller provided an Agency Letter with respect thereto.

(b) Except to the extent that the Government is responsible under Section 18 (a), Seller shall be responsible for, and Seller shall indemnify and hold the Government harmless from and against, the following:

(1) all costs of all investigations, studies, and testing related to Hazardous Materials that were present at the Property at Closing, or were generated at or disposed of from the Property prior to Closing, and all costs to undertake and complete all remedial, removal, and other actions necessary to contain, clean up, and/or remove all such Hazardous Materials in accordance with applicable Environmental Laws; and

(2) all Claims and Liabilities that are asserted against or incurred by the Government after the Effective Date and arise from or relate in any way, directly or indirectly, to (i) any Hazardous Materials at or affecting the Property, or resulting from activities on the Property, (ii) the use, generation, storage, treatment or disposal of Hazardous Materials onto the Property from any other property or onto any other property from the Property, (iii) the past disposal of Hazardous Materials on the Property by any person, known or unknown, (iv) the removal, treatment, remediation, or disposal of Hazardous Materials on or

from the Property, and (v) any personal injuries or property damages, real or personal, any violations of Environmental Laws or demands of Governmental Entities, and any lawsuit brought or threatened, settlement reached, or government order resulting from, arising out of or in any way related to Hazardous Materials at or from the Property.

(c) Seller's obligations in this Section 18 do not limit or replace any other obligations that Seller may have at common law or otherwise.

(d) The Government shall give Notice to Seller with respect to any Claim against the Government of which the Government receives actual notice, or if the Government receives actual notice of any Environmental Condition that the Government has reason to believe is likely to give rise to a claim for indemnity hereunder.

Such Notice shall be given within sixty (60) days after the Government receives such notice or becomes aware of such a likelihood. Failure of the Government to comply with the notice requirement of this paragraph shall not limit Seller's indemnity responsibility except to the extent that such failure materially prejudices Seller's rights or materially increases its liabilities and obligations hereunder.

(e) Upon receipt of Notice that any Claim has been or may be asserted against the Government, Seller shall if requested by the Government promptly proceed to provide an appropriate defense, compromise, or settlement at Seller's expense. If the Government requests Seller to provide a defense, the Government shall have the right to participate in such defense and must approve any action by Seller that affects the interest of the Government. If the Government at any time elects in its absolute discretion to control such defense, the Government shall have the right to carry out and exclusively control

such defense, compromise, or settlement, insofar as the Government is affected, and the cost thereof shall be immediately due and payable by Seller to the Government upon presentation of an invoice for such cost.

(f) There shall be no time limit on the Government's rights under this Section 18, except for any federal statute of limitations that may apply to a cause of action to enforce this Section. A cause of action to enforce this Section shall not be deemed to arise before the Government has actual knowledge of the facts giving rise to the particular cause of action.

(g) Seller shall have an ongoing obligation to provide to the Government copies of any additional documentation described in Section 5

(g) above which becomes available to Seller after the Effective Date, within five days after any such documentation becomes available to Seller. Seller shall have an ongoing obligation to inform the Government if Seller discovers that any representation by Seller in Section 10 was untrue either when made or at Closing or has become untrue thereafter. Seller shall inform the Government of any such discovery within five days after Seller makes such discovery.

19. Commissions

Seller shall indemnify and hold the Government harmless from and against all liabilities, costs, damages and expenses arising from any claims for brokerage or finders' fees, commissions or other similar fees in connection with the transactions provided for herein insofar as such claims shall be based upon actual or alleged arrangements or agreements made by Seller or on Seller's behalf.

20. Termination

If this Agreement is terminated by the Government pursuant to any of the provisions of this Agreement authorizing its termination, Seller and the Government shall have no further obligation or liabilities to the other under this Agreement except as provided in Section 6

(d), Section 7, Section 18, and Section 21. This Section shall not limit any liability of Seller for any breach of this Agreement, including without limitation any untrue representation or warranty.

21. Default by Seller

If Seller fails to timely perform any of its obligations under this Agreement for any reason other than the Government's default, or if any of Seller's representations and warranties is untrue when made or becomes untrue prior to Closing, the Government shall be entitled to terminate this Agreement and seek damages, to seek specific performance of this Agreement, and/or to exercise any other rights or remedy available at law or equity by reason of such failure by Seller. The Government's remedies are not exclusive, and pursuit of one remedy shall not limit any other remedy.

22. Default by Government

If the Government shall fail to purchase the Property for any reason other than Seller's default or the termination of this Agreement pursuant to any of the termination provisions hereof, Seller shall be entitled to seek damages to the extent permitted by law, but in no event shall all damages exceed ten percent (10%) of the Purchase Price. Seller shall not be entitled to specific performance.

23. Assignment of Agreement; Delegation

This Agreement may be assigned by the Government, but no assignment shall relieve the Government of liability hereunder unless Seller agrees in writing. The Government may delegate its inspection and other rights under this Agreement to its agents, representatives, and contractors.

24. No Assumption of Seller's Liabilities

The Government is acquiring only the Property and shall not be deemed a successor of Seller, except to the extent the Government expressly assumes, in writing, a specific obligation of Seller. After Closing, Seller shall indemnify and hold the Government harmless for any obligation of Seller not expressly assumed in writing by

the Government.

25. Casualty and Condemnation

(a) If the Property is damaged by fire or other casualty before the Closing Date, Seller shall give immediate Notice thereof to the Government. Seller shall also promptly provide confirmation of insurance coverage. If the Property can be restored to substantially its condition prior to such casualty within a period of ninety (90) days thereafter (as the cost and time are estimated by the Government in its discretion), Seller shall, at Seller's sole cost and expense, promptly restore the Property to substantially its condition prior to such fire or other casualty; and in such event, the Closing Date shall be extended as provided in Section 4 (a). If the Government estimates that such restoration cannot be completed within said ninety-day period, then the Government may terminate this Agreement upon delivery of Notice to Seller within twenty (20) days following receipt by the Government of Notice of such casualty. If the Government does not elect to so terminate this Agreement, the Closing shall proceed with no reduction in the Purchase Price for the Property, but all rights and claims with respect to insurance proceeds (other than rent loss or business interruption insurance for periods through the Closing Date) paid or payable with respect to such casualty shall be assigned by Seller to the Government. If and to the extent the Government receives insurance proceeds in excess of the Government's cost to restore the Property, the Government shall reimburse Seller up to the amount of such excess for reasonable costs, incurred by Seller in connection with the casualty, to protect life and property, including without limitation costs to secure the Property.

(b) If any portion of the Property is condemned, or becomes the subject of any condemnation proceeding, prior to Closing, the Government may elect at its sole discretion to either (i) proceed to Closing without a reduction in the

Purchase Price, in which case Seller shall assign all its interest in any condemnation proceeds to the Government, or (ii) terminate this Agreement by Notice to Seller.

26. Officials not to Benefit

No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise thereupon; but this provision shall not be construed to extend to the Agreement if this Agreement is made with a corporation for its general benefit.

27. Covenant Against Contingent Fees

Seller warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this provision, the Government shall have the right to annul this Agreement without liability or in its discretion to deduct from the Purchase Price the full amount of such commission, percentage, brokerage, or contingent fee.

28. Miscellaneous

(a) All of the representations, warranties, covenants and agreements of Seller and the Government, as well as any rights and benefits of the other party, shall survive the Closing and shall not be merged into the Deed or Closing.

(b) The covenants and agreements herein contained shall extend to and be obligatory upon the successors and assigns of the respective parties hereto.

(c) This Agreement embodies the entire agreement between the parties hereto with respect to the transaction contemplated hereby, and there are no other agreements, representations, or warranties between the parties with respect to the Property.

(d) Seller and the Government agree that each will, at any time and from time to time after the Closing Date, upon the request of the other party hereto, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered all further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances reasonably required for the effective assigning, transferring, granting, conveying, assuring and confirming to the other party in collecting and reducing to possession, any or all of the Property.

(e) This Agreement, and the rights and obligations of Seller and the Government hereunder, shall be governed by, and construed and interpreted in accordance with, Federal law and not the law of any state or locality; provided that as to all matters involving the common law of title to real property and the common law of vendor and purchaser of real property, the law of the state where the Property is located shall govern to the extent not inconsistent with Federal law. To the extent that a court or other tribunal looks to the laws of any state to determine or define the Federal law, it is the intention of the parties that such court or tribunal shall look only to the laws of the state where the Property is located. As used in this paragraph, "state" includes the District of Columbia, Puerto Rico and the U.S. Virgin Islands. Nothing in this Agreement shall affect the sovereign rights, including without limitation condemnation rights, and immunities of the Government.

(f) This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

(g) References in this Agreement to "Sections" and "Subsections" refer to this Agreement unless otherwise indicated. Exhibits referred to in this Agreement are attached hereto and incorporated herein.

(h) All Notices under this Agreement shall be in writing and shall be deemed to be delivered on the earlier to occur of (i) the date of actual receipt of the Notice (regardless of how it is delivered), and (ii) whether or not actually received, two days after the Notice has been deposited in the United States Mail, postage paid, registered or certified mail, return receipt requested, addressed to Seller or the Government, as the case may be, at the addresses set forth opposite the signature of such party hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Address for Notices: [SELLER]

By:
Name:
Title:

Date executed by Seller:

THE UNITED STATES OF AMERICA

By:
Name:
Title:

with a copy to:

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NIH